ESDRAS K. HARTLEY

IBLA 75-452 Decided December 23, 1975

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting in part oil and gas lease offer U-26790.

Set aside and case remanded.

1. Oil and Gas Leases: Consent of Agency--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Lands Subject to--Wilderness Act

   National forest public lands which have not been withdrawn from oil and gas leasing but are under study by the Forest Service as a proposed wilderness area are available for leasing in the discretion of, and under conditions imposed by, the Secretary of the Interior. Such discretion is not properly exercised when the Bureau of Land Management rejects an offer solely upon the recommendation of the Forest Service that land is a "candidate" for a proposed wilderness area without making an independent determination that leasing, with appropriate protective stipulations, is or is not in the public interest.

APPEARANCES: Eugene A. Reidy, Esq., of Moran, Reidy & Voorhees, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On June 2, 1974, Esdras K. Hartley filed noncompetitive oil and gas offer U-26790 for 2554.48 acres in Sevier County, Utah, within the Fish Lake National Forest. By decision dated March 14, 1975, the Utah State Office, Bureau of Land Management (BLM), partially rejected the offer to exclude land in T. 25 S., R. 2 E., S.L.M.

The partial rejection was based solely upon a recommendation from the Acting Regional Forester, United States Forest Service,

not to lease the land because it was a "candidate wilderness area." The Bureau apparently did not independently consider whether the lease should issue.

Basically, appellant contends that his offer should not be rejected unless and until the land within the proposal is actually included within a wilderness area. He requests that his offer be suspended so that it will retain its priority.

[1] Under the Wilderness Act of September 3, 1964, 16 U.S.C. §§ 1131, 1133(d)(3), lands which are in approved national forest wilderness areas may be leased for their minerals until December 31, 1983, to the same extent as prior to the Act. The leases would be subject to reasonable regulations by the Secretary of Agriculture governing ingress and egress consistent with the mineral use of the land, and to reasonable stipulations for the protection of the wilderness character of the land consistent with the mineral use of the land. 43 CFR Subpart 3567.

It would be anomalous to conclude that although lands in designated and approved wilderness areas are subject to oil and gas leasing until December 31, 1983, lands merely under study for a proposed wilderness area may not be leased. There is nothing in the law which requires such a result. In the absence of a withdrawal of land from mineral leasing, public lands in national forests are subject to leasing for their oil and gas deposits in the discretion of, and under the conditions imposed by, the Secretary of the Interior. Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972). Until lands are approved by Congress as wilderness areas, their status for oil and gas leasing, and the responsibility and authority of the Secretary of the Interior in that regard, is unaffected. If lands are within Congressionally approved wilderness areas, the lands may be leased by the Secretary of the Interior, but subject to reasonable access conditions and wilderness protection stipulations imposed by the Secretary of Agriculture.

Since there is no legal bar to leasing lands under study for a national forest wilderness area in the absence of a withdrawal, the question for this Department is whether such lands should be leased in the exercise of the Secretary of the Interior's discretion. The recommendations of the Department of Agriculture regarding national forest public lands are important in determining whether a lease should issue, but are not conclusive. W. T. Stalls, 17 IBLA 175 (1974); Carolyn S. Edwards, 14 IBLA 141 (1974). Furthermore, although the recommendations of the Department of Agriculture for stipulations to protect environmental and other land use values will be carefully considered, the Department of the Interior determines what stipulations must be required as a prerequisite to lease issuance. Earl R. Wilson, 21 IBLA 392 (1975).

In considering whether lease offers should be rejected in the exercise of discretion, we must differentiate between an exercise of discretion in a particular case or group of related cases, and an exercise of discretion which would have general applicability. To uphold the Bureau's decision in this case without remanding it for further consideration partakes the nature of a general exercise of discretion because there is nothing to show that the Bureau of Land Management independently considered whether issuance of the oil and gas lease would be in the public interest. We would have to hold generally that because land is in a study area for a proposed national forest wilderness area, offers must be rejected. We note that the acreage involved in this case may be small in comparison with the total acreage in national forests within the State of Utah. However, acreage under study for proposed wilderness areas in national forests throughout the nation may be very significant, totaling millions of acres. See, e.g., Forest Service, U.S.D.A., Report No. 9, "Proposed New Wilderness Study Areas" (January 1973). We will not endorse in such a blanket manner the rejection of oil and gas lease offers generally, solely because the lands are within a study area for a proposed national forest wilderness area.

There may be compelling public interest factors which would warrant the rejection of oil and gas lease offers in particular study areas. Therefore, these cases should be considered in the usual ad hoc manner where the exercise of discretion will be made particularly rather than generally. Certainly the fact that an area is under study to protect unique or important environmental or resource values is very important. Where BLM officials have carefully considered and weighed the multiple use factors and decided rejection of an offer is required in the public interest to protect special environmental and resource values, this Board has upheld such a rejection. E.g., Rosita Trujillo, 21 IBLA 289 (1975). In the present case, however, there was not a proper exercise of discretion because BLM officials did not make an independent determination whether leasing this land is or is not in the public interest.

When this case was transmitted to this Board, BLM requested a copy of the Environmental Analysis Report (EA Report) upon which the Forest Service recommendation was based. In transmitting the EA Report, the Acting Regional Forester in a letter dated April 29, 1975, stated:

> * * * Please note on the last page of the report, Recommendations 2, "Continue present management to protect wilderness values until formal study is completed and recommendations made." It is our position that to adequately protect wilderness values, these lands should not be encumbered with oil and gas leases. This is consistent with the management direction for

> Wilderness Study Areas prescribed by the Chief of the Forest Service in Roadless and Undeveloped Areas (Final Environmental Statement), October 1973 (copy previously furnished to your office). (Emphasis in original.)

We have had cases before this Board where the Forest Service evaluated roadless areas for study as possible wilderness areas and proposed certain stipulations which recognized the wilderness study and provided for contingencies in the event a wilderness was approved or disapproved. E.g., Rainbow Resources, Inc., 17 IBLA 142 (1974). The Acting Regional Forester's position in the present case is not consistent with the approach suggested in Rainbow Resources. Further, the specific recommendations in the EA Report, upon which he based his no-lease recommendation, are:

1. Recommend study to be conducted to determine possible Wilderness values and classify Wilderness as study indicates.

2. Continue present management to protect Wilderness values until formal study is completed and recommendations made.

The EA Report indicated that the entire area has been subject to Department of the Interior oil and gas leases, but that no exploration activities had been engaged in during the past few years. It recommended directional drilling in the event prospecting is started. Therefore, it may be consistent with the EA Report and the present management of the area to permit oil and gas leases with adequate protective stipulations.

We will not decide at this time whether a lease should issue in this case. BLM should initially determine whether the public interest is best served by rejecting the offer or issuing a lease with appropriate protective stipulations. In making this determination BLM should consider the mineral potential 1/ together with environmental and other factors and should coordinate the matter further with the Forest Service. 2/

1/ We note that the EA Report in one place states that the Utah State Mineral Survey indicates "poor prospects for oil, gas, and coal in the area." However, in another place it states that Survey reports a "fair chance for oil and gas to be underlying the area."

2/ The BLM Manual, Part 3509, (Rel. 3-16, November 9, 1970) sets forth the procedures to be followed for protecting surface resources where mining and exploration activities are proposed, including applications under the mineral leasing acts. These procedures envisage coordination with the agency having administrative control over the surface resources and consideration by appropriate BLM personnel

If BLM, after an appropriate consideration, determines that a lease should not issue, it should issue a decision setting forth the reasons for the rejection. With regard to appellant's request that his offer be suspended, it shall be suspended only until BLM makes a determination to lease or not to lease. It is contrary to general Departmental policy to suspend oil and gas lease offers to await possible contingencies which would affect the leasability of certain land. John Oakason, 19 IBLA 191 (1975).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is set aside and the case is remanded to the Bureau of Land Management for further consideration.

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Joan B. Thompson
Administrative Judge

We concur:

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Newton Frishberg
Chief Administrative Judge

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Joseph W. Goss
Administrative Judge

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Anne Poindexter Lewis
Administrative Judge

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Frederick Fishman
Administrative Judge

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Douglas E. Henriques
Administrative Judge

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Edward W. Stuebing
Administrative Judge

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fn. 2 (continued)
of resource values in addition to minerals, such as air, water, vegetation, antiquities, scenic and recreational values, and wildlife habitat. These procedures were not followed in this case.

DISSENTING OPINION BY ADMINISTRATIVE JUDGE RITVO:

I would affirm the State Office decision rejecting the offers in part. Esdras K. Hartley has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated March 14, 1975, partially rejecting his oil and gas offer (U-26790) to lease certain lands which are situated, in part, within the Fish Lake Mountain Wilderness Study Area in Region 4 of the Fishlake National Forest, Utah.

Following receipt of appellant's lease offer, the BLM referred the matter to the Forest Service for recommendations concerning use of the lands situated within the national forest system. The Forest Service recommended that the BLM reject that portion of the lease offer embracing lands within the Fish Lake Mountain Wilderness Study Area being studied for possible inclusion in a wilderness area pursuant to the Wilderness Act, 16 U.S.C. § 1131 et seq. (1970). Accordingly, by its decision of March 14, 1975, the BLM partially rejected appellant's lease offer.

Appellant raised no objections to the suitability of the land for inclusion within a wilderness area. In his statement of reasons on appeal, he argued only that partial rejection of the offer was premature and requested that the Board instruct the BLM to hold the lease offer in suspense until such time as the subject lands have either been included within or excluded from the proposed Wilderness Area. On this point, I agree with the majority's statement that, if leases are not to issue, the offers are not to be held in suspense.

However, insofar as the majority remands the offer for the State Office to make an independent evaluation to determine whether a lease should issue and, if one is to, of the stipulations necessary to protect the land, I respectfully dissent.

Whatever justification there may be for the Board's recent policy of refusing to accept the recommendations of the Forest Service and other agencies having administrative jurisdiction over land subject to leasing under the Mineral Leasing Act for Public Lands, which I discuss later, we are concerned here not with run-of-the-woods forest land, but with a category of forest lands, rare in relation to the extent of forest lands in general, to which Congress has specially addressed itself and imposed particular obligations on the Department of Agriculture.

The lands applied for lie within the Fishlake Mountain Wilderness study Area. The study area encompasses only a small area out of a sizeable forest.

In studying an area as a possible wilderness area, the Forest Service is following the direction of the Congress. The Wilderness Act, supra, provided for the establishment of certain areas as wilderness and for the study of other areas for later inclusion in such an area. The Act first states its purposes and then defines a wilderness:

> § 1131. National Wilderness Preservation System.
>
> (a) Establishment; Congressional declaration of policy; wilderness areas; administration for public use and enjoyment, protection, preservation, and gathering and dissemination of information; provisions for designation as wilderness areas.
>
> In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as "wilderness areas" except as provided for in this chapter or by a subsequent Act.
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> * * * * * * *

(c) Definition of Wilderness.

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value. (Pub. L. 88-577, § 2, Sept. 3, 1964, 78 Stat. 890.)

While the Act also leaves lands in a wilderness area open to mineral leasing until December 31, 1983, to the same extent as they were before, any leases issued for lands in a wilderness are subject to reasonable regulations by the Secretary of Agriculture. 43 U.S.C. § 1133(d)(3); 43 CFR Subpart 3567. However, the fact that land is open to leasing does not mean that it must be leased.

Thus the first question to be decided by anyone considering whether this land is to be leased is whether it is suitable for inclusion in a wilderness area. The next question, if the first is decided in the affirmative, is to decide whether it is to be leased. If it is to be leased, then the final issue, is what stipulations are necessary to protect the wilderness values of the land.

This appeal raises the issue of who is to make these decisions. The majority entrusts them completely to the Department of the Interior.

I believe it is difficult for the State Office to make such determinations without infringing on the responsibilities of the Forest Service. It is not the duty, nor does it lie within the jurisdiction, of the Department of the Interior to decide whether lands within a national forest are to be included within a wilderness area. That decision is to be made first by the Secretary of Agriculture and ultimately by the Congress.

But the majority would have the State Office determine not only whether a lease should issue, but if one does, also decide what stipulations would be reasonable to protect the other values of the forest land. Since such decisions can be made only by first deciding what values the forest land has, the State Office must first determine whether the land is suitable for inclusion in a wilderness area.

If the State Office decides that the land is not suitable for inclusion in a wilderness area, it presumably would issue a lease subject to such stipulations as it deemed necessary. If it decides that way, then by issuing a lease and permitting operations to be conducted in certain ways, the wilderness character of the land may be destroyed. Thus the authority of the Department of Agriculture to make that initial crucial decision would have been preempted by the Department of the Interior.

In the alternative the State Office may conclude that the land is suitable for inclusion within a wilderness area, and issue a lease with stipulations it deems suitable to preserve the wilderness character of the land. Here, too, it would have usurped the authority of Agriculture, for as the majority states, if land is included within a wilderness area, it is the Secretary of Agriculture who issues the regulations and the stipulations for the protection of the wilderness character of the land. His concept of what is reasonable may well differ substantially from that of this Department.

So here again this Department is interposing its views on what in the first instance is a matter for Agriculture, and by acting first it may well set at naught Agriculture's final conclusion as to the proper use of the Forest.

There is no need for such action. The Forest Service asked only that the land be left in statu quo until its suitability for wilderness is decided.

I can discern no reason to refuse to accede to this request for a temporary delay which, if granted, would permit the determination of whether and under what conditions to lease, to be made with a knowledge of the most pertinent factor in making that decision--that is, whether the land is to be in a wilderness area. Further decisions could then be made by the proper person with proper knowledge. 1/

Until very recently a recommendation by the Forest Service not to lease land in a national forest would have been followed in all but unusual circumstances.

In Weldon C. Julander, A-29224 (August 28, 1962), the Agricultural Research Service of the Department of Agriculture had recommended that an oil and gas lease offer be rejected for certain lands withdrawn as an experimental station under the jurisdiction of the Department of Agriculture. Assistant Secretary John C. Carver affirmed the rejection of the offer, stating:

> On appeal to the Secretary, Julander contends that both the national economy and the local economy will benefit from the development of oil and gas in New Mexico, and for these reasons his lease offers should be accepted in their entirety.
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> Section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1958 ed., sec. 226), under which the appellant's lease offers were filed, provides that lands subject to leasing which are known or believed to contain oil or gas deposits "may be leased by the Secretary of the Interior." It is thus apparent that the Secretary of the Interior is vested with discretionary authority to determine whether a particular tract of land is to be leased and the courts have so held. Haley v. Seaton, 281 F. 2d 620 (D.C. Cir. 1960). Furthermore, it is the consistent policy of the Department to accede to the wishes of the agency that is administering land for which an oil and gas lease is sought and thus to refuse to lease land when the administering agency objects to issuance of an oil and gas lease on the ground that leasing would interfere with the purposes for which the

1/ For a possible way of resolving a final conflict, see 23 CFR 23.5(b); BLM Manual 3509.1, step 10.

> lands are being administered. Richfield Oil Company, 66 I.D. 106 (1959); Henrietta Koslosky, A-28411 (August 26, 1960); Russell H. Reay, A-28578 (February 24, 1961). [Underlining added.]

A full discussion of the difference between the law which leaves the ultimate decision of whether to lease in the Secretary of the Interior, the policy of the Department to accept the recommendation of the administering agency and a situation in which that policy was not followed is found in Agricultural Research Service, A-31033 (January 17, 1969). There, in holding that a prospecting permit application would be allowed for land included within an experimental sheep grazing area Administered by the Agricultural Research Service of the Department of Agriculture, Assistant Secretary Harry Anderson stated:

> Section 9 of the Mineral Leasing Act, as amended, 30 U.S.C. § 211 (1964), confers upon the Secretary of the Interior authority to issue, to qualified applicants, phosphate leases or prospecting permits "when in his judgment the public interest will be best served thereby." (Emphasis added.) Thus, Congress placed upon the Secretary of the Interior the sole responsibility for determining whether or not the public interest would be served by subjecting particular land to mineral leasing or exploration. Moreover, it made no provision for the transfer of this responsibility in the case of lands the surface of which may be reserved for a specific purpose and placed under the administrative jurisdiction of another agency of the Government. 3/ If public lands are subject to the provisions of the Mineral Leasing Act, they are, to the extent to which judgment

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3/ The Mineral Leasing Act is distinctly different in this respect from the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1964), which provides that no "mineral deposit covered by this * * * [section] shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit."

must be exercised by the Secretary, under the jurisdiction of this Department, regardless of where the authority may be vested for administration of their surface. 4/

Of course, as a matter of comity, in determining whether or not the issuance of a mineral lease or prospecting permit on withdrawn land is in the public interest, the Secretary of the Interior consults with the administering agency and usually honors its views. On numerous occasions, the Department has summarily disposed of lands from the rejection of applications for such lands with a simple explanation to the effect that it is the consistent policy of the Department to accede to the wishes of the agency that is administering land when the administering agency objects to issuance of a lease on the ground that leasing would interfere with the purposes for which the land is being administered. See, e.g., Clark H. Boyles, A-27538 (January 23, 1958), and cases cited; G. R. Carroll et al., A-27783 (December 19, 1958); Richfield Oil Company et al., 66 I.D. 106 (1959); Henrietta Koslosky, Joseph W. Alexander, A-28411 (August 26, 1960); Weldon Julander, A-29224 (August 28, 1962). Nevertheless, it is implicit, if not expressly stated, in these decisions that the Secretary of the Interior, not the administering agency, makes the ultimate decision as to whether or not mineral leasing is to be permitted. 5/ Thus, although the action taken by the

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4/ It is undisputed in this case that lands withdrawn under Executive Order No. 3767 remain subject to operation of the mineral leasing laws.

5/ This point has been stressed on several occasions. Thus, in Russell H. Reay, A-28578 (February 24, 1961), we observed that:

"* * * Since the land is in a national forest and administered by the Forest Service, it was proper for the Department of the Interior to obtain the views of the Forest Service. It was also proper to take note of the data presented by the City of Los Angeles since the land is just above a reservoir used by the City. But the decision not to lease the land was the decision of the Department and it is clearly within the limits of the authority bestowed by the Mineral Leasing Act. * * *" See Richfield Oil Company et al., supra; Paul B. Lorenz, A-27592 (July 20, 1959).

> Bureau in this case represents a departure from routine practice, and although the Department would not acknowledge any right on the part of a mineral lease applicant to a hearing to determine the leasability of land, there can be no doubt as to the authority of this Department to question the recommendations of an agency administering reserved public land and to take such steps as are deemed necessary, including the ordering of a hearing, to ascertain the facts essential to an informed determination. Cf. John Snyder, State of Montana, 72 I.D. 527 (1965). The question that remains, then, is whether or not the record developed in this case affords a sound basis for the Bureau's determination.

In that case the Assistant Secretary found that oil and gas leasing, under certain conditions could be permitted. However he did recognize what the usual practice had been and did not indicate that it was not to continue in an ordinary case.

> The general policy is reflected in the Forest Service Manual:
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> > 2824.23 - Rejection and Appeals. The land-office manager will reject all applications or offers to lease on which an adverse report is received from the Forest Service, and the officer making the original recommendation will be asked to review it.
> >
> > Technically, appeals are from Interior decisions, since the authority to lease is vested in the Secretary of the Interior. Therefore, the formal appeals procedure set up by regulation A-10 (36 CFR 211.2) does not govern. However, an appeal from a decision of the manager of a local land office based on the regional forester's recommendation not to lease will be acted upon by the Chief, and an appeal from a decision of the Director, Bureau of Land Management, based on the Chief's recommendation, will be acted upon by the Secretary.
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> > Hearings, if held, will be conducted by the Department of the Interior officials. If necessary, the Forest Service will participate.

> The policy of the Department of the Interior has been to uphold all decisions based on adverse recommendations of the Forest Service. 2/

It is only recently that this Board has undertaken to depart from the general policy by treating the Forest Service recommendations much more lightly. As the majority says:

> The recommendations of the Department of Agriculture regarding natural forest lands are important (emphasis added) in determining whether to lease, but are not conclusive. W. T. Stalls, 17 IBLA 175 (1974); Carolyn S. Edwards, 14 IBLA 141 (1974). Furthermore, although the recommendations of the Department of Agriculture for stipulations to protect environmental and other land use values will be carefully considered, (emphasis added) the Department of the Interior determines what stipulations will be required as a prerequisite to lease issuance. Earl R. Wilson, 21 IBLA 392 (1975).

The lead case in the change in policy is Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972), in which the Board decided it would no longer follow the consistent policy of this Department ordinarily not to question stipulations requested by the Department of Agriculture or other agencies and purported to overrule prior Departmental decisions so stating. Since the prior practice was a "policy" decision, as distinct from a legal one, it seems that the Board changed a policy rather than overruled an interpretation of a law or a regulation. Neither the Miller decision, nor any of the ones flowing from it, referred to instructions, or indeed to any indication, from the Office of the Secretary that the prior Departmental policy was to be changed. The new direction then stands as the Board's own concept of what the Departmental policy should be.

If the former policy were to be followed, the Forest Service's recommendation not to issue a lease would be followed, as the State Office did, and we would affirm the rejection of the offer, particularly where, as in this case, we are dealing with lands of possible special values and the appellant did not dispute the suitability of land for wilderness purposes.

2/ The policy is recognized in several text books. Hoffman, Oil and Gas Leasing on Federal Lands, 31-32 (1st Rev. 1957); Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leasing, § 2.12(f) 2 supp.

However, even if we accept that the Department of Agriculture's recommendation will be given less weight than formerly, we must still examine what weight it will be given and how much justification that Department must submit to support its request.

The Forest Service has developed an Environmental Analysis Report for Region 4 of the Fishlake National Forest. The report includes an inventory of the environmental resources within the proposed Wilderness Area and concludes with the following recommendations:

> 1. Recommend study be conducted to determine possible Wilderness values and classify Wilderness as study indicates.
> 2. Continue present management to protect Wilderness values until formal study is completed and recommendations made.

Based on the Environmental Analysis Report, the Forest Service concluded, in its recommendation to the BLM, that to protect wilderness values adequately pending completion of the study, the subject land should not be encumbered with oil and gas leases.

The provisions of the Wilderness Act do not prohibit mineral leasing within areas designated as or proposed to be included within National Forest Wilderness Areas. 16 U.S.C. § 1133(d)(3) (1970); 43 CFR 3567.1-1. However, the Department of the Interior is vested with plenary authority to refuse to issue leases for oil and gas when it considers such issuance to be contrary to the public interest. Udall v. Tallman, 380 U.S. 1, 4 (1965); Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965); T. R. Young, Jr., 20 IBLA 333 (1975); Rosita Trujillo, 20 IBLA 54 (1975); Exxon Co., 15 IBLA 345 (1974). In the present case, the Forest Service has established that the area in question has special wilderness values which might be damaged if oil and gas leasing were to be permitted prior to completion of the wilderness study. I would find this to be a sufficient basis to sustain the BLM's determination not to lease the subject lands until the study is completed. Cf. John Oakason, 19 IBLA 191 (1975).

We have no reason to doubt that the Forest Service examined the land in light of the statutory requirements for a "wilderness area" and properly concluded that this area could be found eligible for inclusion in one.

The majority not only denies that oil and gas lease offers can be rejected solely because the lands applied for are within a study area for a proposed national forest wilderness area, but would also require the BLM itself, as to each offer, to carefully consider and weigh the multiple use factors before it can determine whether leasing is in the public interest. It is apparently not enough that the Forest Service has itself carefully considered the problem and concluded that until the study is completed oil and gas leasing should be denied in order to prevent damage to the special wilderness values in the area. I would hold that in the absence of any evidence, or indeed any allegations to the contrary, the State Office is justified in accepting the conclusions of the Forest Service.

The Board has been much less eager to substitute its judgment for that of its own officers charged with determining whether oil and gas leases should issue for lands within areas under consideration as a potential wild and scenic river area pursuant to § 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C.A. § 1276(c) (Supp. 1975).

In John Oakason, 19 IBLA 191 (1975), several oil and gas lease offers were filed for leases along the Colorado River in Utah. In affirming the rejection of the offers, the Board stated:

> The Bureau of Land Management has identified approximately 83 miles of the Colorado River from the Colorado state line to Canyonlands National Park as having potential as a wild, scenic or recreational river under section 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1276(d) (1970). This portion of the Colorado River has recently been added to the list of rivers to be studied for inclusion within the wild and scenic rivers system. The Bureau determined that any disturbance of the river environment or the adjacent landscape or any encumbrances on the land could irreversibly damage significant resources and degrade the quality of the river. This could preclude its designation as a wild, scenic or recreational river, and would not be in the best public interest. Accordingly, the Colorado River Corridor area was designated "No Lease." All of appellants' lease applications are for land within the Colorado River Corridor, and were thus rejected. [Emphasis added.]

It then quoted from a letter the State Director sent to oil and gas lease offerors:

> This is to inform you of specific reasons for our rejection of your offer[s] for lease of oil and gas.
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> Through the process of our planning and inventory system approximately 88% of the lands we administer in Utah have been categorized as open to oil and gas leasing (see attached sheet) [infra]. Many of these areas have unique and valuable surface resources that can be protected if activities are controlled with special stipulations, which may include no surface occupancy. Approximately 12% of the land we administer has been categorized as being suspended from oil and gas leasing. These areas have surface values that could be irreversibly damaged if oil and gas activities were allowed. Leasing in these areas is suspended until planning and/or special studies are completed.
>
> The decisions that are made concerning oil and gas must consider all resources. As new resource information is brought to light, these categories are reconsidered. The specific values that have been identified in the areas of your leases are:
>
> 1. Potential designation of the Colorado River and its corridor under the "Wild and Scenic Rivers Act" of 1968.

It then quoted from several earlier similar decisions, Dean W. Powell, 18 IBLA 249 (1973), and Sheridan L. McGarry, 14 IBLA 23 (1973), which had affirmed the rejection of similar lease offers:

> * * * that lands are available for leasing, however, does not necessitate their leasing.
>
> It is conceivable that this proposal for a wild and scenic river area may * * * die aborning. However, while the lands are under consideration by the State Director for possible inclusion under the Wild and Scenic Rivers Act of 1968, 16 U.S.C. §§ 1271-1287 (170), the Secretary of the Interior, through his delegates, has the discretion to refrain from leasing the tracts in question. Section 5 of the Wild

> and Scenic Rivers Act, 16 U.S.C. § 1276(d) (1970), mandates consideration by federal agencies of potential national wild, scenic and recreation river area. Similarly, Section 4 of the Act, 16 U.S.C. § 1275(a), prescribes that the Secretary of the Interior shall from time to time submit proposals to the Congress and the President for additions to the national wild and scenic rivers system.
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> Even more recently, in another such case, Rosita Trujillo, 21 IBLA 289, 291, it held:
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> > Appellant's contentions are neither erroneous nor unreasonable. They represent only another point of view; a different side of the ongoing controversy over the identification and priority of concerns which comprise the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

I would apply the same standard to the judgment of the Forest Service and to the protection of the special scenic and wilderness values of land entrusted to it. I would be particularly mindful if the fact the changes in the environment as a result of the State Office's decision could irreversibly impair the wilderness character of the land.

Just as the Board supports the State Office in the rejection of oil and gas lease offers for lands adjacent to a river proposed for study to determine if the river qualifies for inclusion in the wild and scenic river system, so too would I support the Forest Service when it attempts to preserve the special wilderness values of land proposed for study in a National Forest Wilderness area and postpone an irreparable decision until all the facts are known.

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Martin Ritvo
Administrative Judge